

DATE: May 6, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22927

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esq., Department Counsel

FOR APPLICANT

Michael G. Jones, Esq.

SYNOPSIS

Applicant is a 44-year-old married woman who immigrated to the U.S. from Nigeria and has since obtained U.S. citizenship, had five native-born children, earned a college degree in accounting, and, along with her husband, runs a successful company providing administrative and information technological services to the government. Although she has ties to Nigeria based on visiting and financially supporting her elderly mother and mother-in-law, those circumstances are unlikely to make Applicant potentially vulnerable to foreign influence. Moreover, Applicant's ties to the U.S. are so substantial that she can be expected to resist and report any potential foreign influence or pressure. Clearance is granted.

STATEMENT OF THE CASE

On October 22, 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B for foreign influence.

Applicant's Answer to SOR is undated, but apparently submitted in November 2002. She admitted to the SOR's five factual allegations (subparagraphs 1.a. - 1.e) with explanations, and she requested a clearance decision based on a hearing record.

This case was initially assigned to another administrative judge, but DOHA reassigned the case to me on January 7, 2003, to conduct a hearing and issue a written decision. Thereafter, on January 16, 2003, a notice of hearing was issued to the parties scheduling the hearing for Thursday, February 27, 2003, at a location near Applicant's place of employment. Applicant appeared with counsel and the hearing took place as scheduled. DOHA received the hearing transcript March 7, 2003.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Concerning the SOR allegations in general, I find that the record evidence as a whole is sufficient to establish, by substantial evidence, the occurrence of all the factual events alleged in the SOR, except as otherwise noted (e.g., Applicant's father passed away in May 2002).

Applicant testified during the hearing and I find her testimony was credible.

Applicant is a 44-year-old married woman who was born in Nigeria and is now a naturalized U.S. citizen. Her spouse was also born in Nigeria and became a naturalized U.S. citizen in 1986. She and her spouse have five children, ages 22 to 16. The children are all native-born U.S. citizens and reside here. Unmarried at the time, Applicant came to the U.S. with the idea of marrying her present husband. The couple married in April 1980. After going through the immigration process, Applicant obtained her U.S. citizenship in 1989.

Applicant and her spouse have owned and operated their own company since 1988. She has served, until recently, as the vice-president of finance and is responsible for the accounting. Indeed, she earned a B.S. in accounting from a U.S. university in 1993. Her husband is the company president. They employ approximately 200 people located in ten states on various defense contracts providing administrative and information technology services (secretarial, clerical, travel order processing, transmitting messages, etc.) for the Departments of Defense, Army, and Air Force. With the exception of the four people at company headquarters, all employees work at military installations or governmental facilities where they may require a security clearance.

Applicant and her spouse appear to be financially successful. Last year, the company earned approximately \$8 million in gross revenue, of which Applicant and her spouse were able to enjoy a handsome profit. Their residential real estate holdings (a home and two rental properties) have an estimated market value north of \$900,000. The couple's other financial assets include, but are not limited to, \$500,000 in certificates of deposit.

Both Applicant and her husband have been and continue to be active in politics (voting, running for office, supporting candidates, etc.). Indeed, Applicant's husband was selected by the governor to serve as a state delegate at a recent national political convention.

Applicant first applied for a security clearance in October 1992 and disclosed her parents' circumstances as well as her travel to Nigeria. Based on that application, she was issued a secret security clearance in December 1992. Thereafter, she was issued an interim top-secret security clearance in December 1999 as well as October 2001. Although neither she nor her husband has had classified information at their company, it is in her capacity as a corporate officer that Applicant seeks to retain a security clearance in conjunction with the so-called facility clearance for the company.

Applicant's 72-year-old mother is a citizen of and resident in Nigeria. Her father passed away in May 2002. Until his death, Applicant was in the process of sponsoring her parents immigration to the U.S. Her mother is still involved in that process, which appears near its conclusion as her case was sent to the U.S. Embassy or Consulate in Lagos for processing and she is scheduled for an interview in July 2003. If allowed to immigrate to the U.S., the mother will reside with Applicant and her husband. Applicant's mother is unaware of the nature of the company's business.

Applicant's 80-year-old mother-in-law is a citizen of and resident in Nigeria. The mother-in-law is described as senile and her condition is such that she often does not recognize Applicant or her husband. Given her poor health, there are no plans for the mother-in-law to immigrate to the U.S. The mother-in-law is also unaware of the nature of the company's business.

Given the elderly status of her parents and mother-in-law, both Applicant and her spouse have traveled to Nigeria for family visits. Applicant did so in at least 1997, 1999, and 2001. During these trips, neither Applicant nor her husband have experienced any safety or security issues when in Nigeria. Likewise, they have never been approached or confronted by Nigerian governmental or military officials other than for routine matters (e.g., customs and immigration).

Applicant and her spouse have provided financial support to their parents in Nigeria. The amounts range from \$1,000 to \$3,000 annually. The money was given to the parents when either Applicant or her spouse visited as the postal system is unreliable and using commercial banks was impractical due to the rural areas where the parents lived. That financial support continues, although it has decreased somewhat with the passing of Applicant's father.

In approximately 1995, Applicant and her spouse decided to build a home for the mother-in-law. The resulting structure is fairly described as a one-bedroom home built from concrete blocks and a zinc metal roof. They did so because the mother-in-law was living in a sod house with mud walls and a thatched roof. The sod house required regular upkeep (e.g., removing mud, fixing the roof, etc.) due to the rainy season, and the new permanent structure eliminates those concerns and worries for Applicant and her husband. The total cost for labor and materials was about \$30,000, which Applicant and her husband would bring to Nigeria in batches when they visited.

The house is built on the family land of Applicant's husband. But due to the applicable inheritance laws and customs, Applicant's husband will not inherit the land and house upon his mother's passing because he is not present in Nigeria. Since Applicant's husband has no plans to return to live in Nigeria, it appears most unlikely that he will inherit this property. Instead, it will pass to a family member (of Applicant's husband's father's family) who is present. Although Applicant and her spouse stay in the house during their visits to Nigeria, the primary purpose for building the house was to provide some comfort for the mother-in-law during her old age. I specifically find the house and land is not a commercial, investment, or business interest in the sense that neither Applicant nor her husband is seeking to earn a profit.

Concerning Nigeria, the U.S. Department of State reports⁽²⁾ the following matters:

- Nigeria is a developing West African country that has experienced periods of political instability. In 1999, Nigeria returned to civilian rule after 16 years of military rule.
- Parts of Nigeria regularly experience localized civil unrest and violence, and the causes and locations vary.
- Violent crime, committed by ordinary criminals as well as by persons in police and military uniforms, can occur throughout the country. Kidnaping for ransom of persons associated with the petroleum sector, including U.S. citizens, remains common in the Niger Delta area.
- Ongoing religious and ethnic conflicts exist in Nigeria between Muslim and Christian groups and between other ethnic groups.

Neither Applicant's mother nor mother-in-law live in an area of Nigeria identified by the U.S. State Department where outbreaks of violence have recently occurred. Moreover, both live in an area where the population is Christian, and so, there are no conflicts between Muslim and Christian groups in this area.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility. Chief among them is the disqualifying and mitigating conditions for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1. through ¶ 6.3.6. of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the record evidence as a whole, the following adjudicative guidelines are most pertinent here: Guideline B for foreign influence.

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.⁽⁵⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue

establishing a substantial-evidence standard.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against them.⁽⁸⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Under *Egan*, Executive Order 10865, and the Directive, any reasonable doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Here, based on the record as a whole, the government has established its case under Guideline B.⁽¹¹⁾

Disqualifying Condition (DC) 1⁽¹²⁾ applies because Applicant's mother and mother-in-law, elderly women that Applicant visits irregularly and supports financially, are citizens of and residents in Nigeria. Indeed, this situation is essentially unchanged since Applicant was first granted a security clearance in 1992, with the exception of her father's passing. None of the other disqualifying conditions apply given the record evidence.

In particular, DC 8⁽¹³⁾ does not apply here for at least two reasons. First, the Nigerian home Applicant and her husband built for the mother-in-law is not a "financial interest" within the meaning of Guideline B. The facts and circumstances show this situation is akin to a gift to an elderly parent as opposed to a financial interest. Second, considering Applicant's (and her husband's) overall financial situation--consisting of sizeable assets in the U.S.--the Nigerian home is not a "substantial" financial interest within the meaning of Guideline B. Indeed, the \$30,000 cost is but a small percentage of their overall financial situation. As Applicant's husband put it, "So what is \$30,000, that wouldn't drag me to a hole in Nigeria."⁽¹⁴⁾ At any rate, given the surrounding facts and circumstances, the existence of the Nigerian home is, in my view, unlikely to make Applicant potentially vulnerable to foreign influence by coercion, exploitation, or pressure.

In mitigation, Applicant's mother and mother-in-law are, in my view, relatively insignificant security concerns as far as making Applicant potentially vulnerable to foreign influence by either coercive or non-coercive means. Both are elderly women living in a rural area who were not employed by or connected with the Nigerian military, law enforcement, or a governmental agency. They are not involved in political, scientific, commercial, or other activities where they might benefit from obtaining U.S. national security information. Given the record evidence, I conclude Applicant's mother and mother-in-law are not agents of a foreign power, nor are they in positions to be exploited by a foreign power. Under these circumstances, mitigating condition (MC) 1⁽¹⁵⁾ applies in Applicant's favor. The remaining mitigating conditions of Guideline B do not apply given the record evidence.

Although MC 1 is the only applicable mitigating condition, the analysis does not necessarily end as other facts and circumstances may mitigate the security concerns. First, Applicant's mother may soon immigrate to the U.S. Presuming she does make that move, any potential security concerns attached to her will then decrease. Second, Applicant and her husband recognize that the mother-in-law has lived her life and they would not risk their current lives or livelihood in the U.S. in the unlikely event that the mother-in-law is used as leverage to obtain classified information. Third, Applicant can fairly be described as a model immigrant. She's a mother of five native-born U.S. citizens who are pursuing lives, educations, and careers in the U.S., she's politically active, she's earned a college degree, and she's a successful businesswoman. Moreover, her spouse, children, professional

career, and financial interests are in the U.S., and that situation is unlikely to change. These are examples of ties that bind most members of a participatory democracy such as the U.S. Accordingly, it is my predictive judgment, based on the record as a whole, that Applicant has the necessary strength of character so that she can be expected to resist and report any potential foreign influence or pressure by either coercive or non-coercive means.

To conclude, after weighing the record evidence as a whole, the foreign influence security concerns are mitigated. Applicant has overcome the case against her and satisfied her ultimate burden of persuasion as to obtaining a favorable clearance decision. Guideline B is decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline B: For the Applicant

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Exhibit 2 (Consular Information Sheet) and Exhibit 3 (Travel Warning).
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
10. *Egan*, 484 U.S. at 528, 531.
11. *See* ISCR Case No. 99-0511 (December 19, 2000) at pp. 10-11 (foreign influence issues are not limited to situations involving coercive means of influence; rather, they can include situations where an applicant may be vulnerable to non-coercive means of influence).

12. "An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country."

13. "A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence."

14. Transcript at p. 111.

15. "A determination that the immediate family member(s), (spouse, father, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States."